

AMENDED IN ASSEMBLY APRIL 12, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1230

Introduced by Assembly Member Rod Pacheco

February 26, 1999

An act to amend Section ~~23035~~ 23609 of the Revenue and Taxation Code, relating to taxation, *to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1230, as amended, Rod Pacheco. Bank and corporation tax: ~~definitions~~ *transfer of tax credits.*

The Bank and Corporation Tax Law provides various credits against the tax imposed by that law.

This bill would provide that a taxpayer subject to that law can transfer a credit to another taxpayer with a tax liability under that law. The bill would require the Franchise Tax Board to establish a system for the registration and verification of transferred credits.

The bill would take effect immediately as a tax levy.

~~Existing law defines the Counsel for the Franchise Tax Board as an attorney or attorneys appointed or employed by the board, acting subject to the approval and supervision of the Attorney General.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. Section 23035 of the Revenue and~~

SECTION 1. Section 23609 of the Revenue and Taxation Code is amended to read:

23609. For each income year beginning on or after January 1, 1987, there shall be allowed as a credit against the “tax” (as defined by Section 23036) an amount determined in accordance with Section 41 of the Internal Revenue Code, except as follows:

(a) For each income year beginning before January 1, 1997, both of the following modifications shall apply:

(1) The reference to “20 percent” in Section 41(a)(1) of the Internal Revenue Code is modified to read “8 percent.”

(2) The reference to “20 percent” in Section 41(a)(2) of the Internal Revenue Code is modified to read “12 percent.”

(b) For each income year beginning on or after January 1, 1997, both of the following modifications shall apply:

(1) The reference to “20 percent” in Section 41(a)(1) of the Internal Revenue Code is modified to read “11 percent.”

(2) The reference to “20 percent” in Section 41(a)(2) of the Internal Revenue Code is modified to read “24 percent.”

(c) (1) With respect to any expense paid or incurred after the operative date of Section 6378, Section 41(b)(1) of the Internal Revenue Code is modified to exclude from the definition of “qualified research expense” any amount paid or incurred for tangible personal property that is eligible for the exemption from sales or use tax provided by Section 6378.

(2) “Qualified research” and “basic research” shall include only research conducted in California.

(d) The provisions of Section 41(e)(7)(A) of the Internal Revenue Code, ~~shall be~~ are modified so that “basic research,” for purposes of this section, includes any basic or applied research including scientific inquiry or

original investigation for the advancement of scientific or engineering knowledge or the improved effectiveness of commercial products, except that the term does not include any of the following:

(1) Basic research conducted outside California.

(2) Basic research in the social sciences, arts, or humanities.

(3) Basic research for the purpose of improving a commercial product if the improvements relate to style, taste, cosmetic, or seasonal design factors.

(4) Any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(e) (1) ~~In the case of~~ *For* a taxpayer engaged in any biopharmaceutical research activities that are described in codes 2833 to 2836, inclusive, or any research activities that are described in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, or any other biotechnology research and development activities, the provisions of Section 41(e)(6) of the Internal Revenue Code ~~shall be~~ *are* modified to include both of the following:

(A) A qualified organization as described in Section 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an institution of higher education as described in Section 3304(f) of the Internal Revenue Code.

(B) A charitable research hospital owned by an organization that is described in Section 501(c)(3) of the Internal Revenue Code, is exempt from taxation under Section 501(a) of the Internal Revenue Code, is not a private foundation, is designated a “specialized laboratory cancer center,” and has received Clinical Cancer Research Center status from the National Cancer Institute.

(2) For purposes of this subdivision:

(A) “Biopharmaceutical research activities” means those activities that use organisms or materials derived

1 from organisms, and their cellular, subcellular, or
2 molecular components, in order to provide
3 pharmaceutical products for human or animal
4 therapeutics and diagnostics. Biopharmaceutical
5 activities make use of living organisms to make
6 commercial products, as opposed to pharmaceutical
7 activities that make use of chemical compounds to
8 produce commercial products.

9 (B) “Other biotechnology research and development
10 activities” means research and development activities
11 consisting of the application of recombinant DNA
12 technology to produce commercial products, as well as
13 research and development activities regarding
14 pharmaceutical delivery systems designed to provide a
15 measure of control over the rate, duration, and site of
16 pharmaceutical delivery.

17 (f) ~~In the case where~~ *If the credit allowed by this*
18 *section exceeds the “tax,” the excess may be carried over*
19 *to reduce the “tax” in the following year, and succeeding*
20 *years if necessary, until the credit has been exhausted.*
21 *The credit may also be transferred to a taxpayer that has*
22 *a tax liability under this part, if the credit has been*
23 *registered for transfer with the Franchise Tax Board. A*
24 *credit that is transferred may be carried over as provided*
25 *in this subdivision.*

26 (g) For each income year beginning on or after
27 January 1, 1998, the reference to “Section 501(a)” in
28 Section 41(b)(3)(C) of the Internal Revenue Code,
29 relating to contract research expenses, is modified to read
30 “this part or Part 10 (commencing with Section 17001).”

31 (h) (1) For each income year beginning on or after
32 January 1, 1998:

33 (A) The reference to “1.65 percent” in Section
34 41(c)(4)(A)(i) of the Internal Revenue Code is modified
35 to read “one and thirty-two hundredths of one percent.”

36 (B) The reference to “2.2 percent” in Section
37 41(c)(4)(A)(ii) of the Internal Revenue Code is
38 modified to read “one and seventy-six hundredths of one
39 percent.”

(C) The reference to “2.75 percent” in Section 41(c)(4)(A)(iii) of the Internal Revenue Code is modified to read “two and two-tenths of one percent.”

(2) Section 41(c)(4)(B) ~~shall~~ *does not* apply and in lieu thereof an election under Section 41(c)(4)(A) of the Internal Revenue Code may be made for any income year of the taxpayer beginning on or after January 1, 1998. That election ~~shall apply~~ *applies* to the income year for which made and all succeeding income years unless revoked with the consent of the Franchise Tax Board.

(3) Section 41(c)(6) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sale to customers in the ordinary course of the taxpayer’s trade or business that is delivered or shipped to a purchaser within this state, regardless of f.o.b. point or any other condition of the sale.

(i) Section 41(h) of the Internal Revenue Code, relating to termination, ~~shall~~ *does not* apply.

(j) Section 41(g) of the Internal Revenue Code, relating to special rule for passthrough of credit, is modified by each of the following:

(1) The last sentence ~~shall~~ *does not* apply.

(2) If the amount determined under Section 41(a) of the Internal Revenue Code for any income year exceeds the limitation of Section 41(g) of the Internal Revenue Code, that amount may be carried over to other income years under the rules of subdivision (f), except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent income year.

SEC. 2. The Franchise Tax Board shall develop a system for registration of credits that a taxpayer plans to transfer pursuant to subdivision (f) of Section 23609 of the Revenue and Taxation Code, as amended by this act. The system shall permit verification of a transferred credit claimed on a tax return and ascertainment that the credit has been properly applied in reducing the transferee’s tax liability.

1 *SEC. 3. This act provides for a tax levy within the*
2 *meaning of Article IV of the Constitution and shall go into*
3 *immediate effect.*

4 ~~Taxation Code is amended to read:~~

5 ~~23035. "Counsel for the Franchise Tax Board" means~~
6 ~~attorney or attorneys appointed or employed by the~~
7 ~~Franchise Tax Board, acting with the approval and~~
8 ~~supervision of the Attorney General.~~

